

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| GILBERT HOWELL, |) | CASE NO. 1:06CV1235 |
| |) | |
| Plaintiff, |) | JUDGE CHRISTOPHER A. BOYKO |
| |) | |
| v. |) | MAGISTRATE JUDGE VECCHIARELLI |
| |) | |
| COMMISSIONER OF SOCIAL SECURITY, |) | |
| |) | |
| Defendant. |) | <u>ORDER ADOPTING REPORT AND</u> <u>RECOMMENDATION OF</u> <u>MAGISTRATE JUDGE</u> |

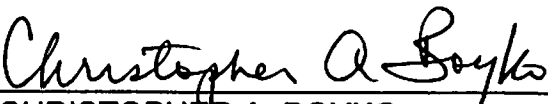
Gilbert Howell ("Plaintiff"), seeks judicial review of the final decision of Jo Anne Barnhart ("Defendant"), Commissioner of the Social Security Administration ("SSA"), denying Plaintiff's Application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"), ECF Dkt. #1 at 1-2. Plaintiff asserts the Administrative Law Judge ("ALJ") erred in finding Plaintiff failed to meet the requirements of mental retardation as defined in 20 C.F.R. Part 404, Subpart P, Appendix 1 Listing 12.05(C). ECF Dkt. #11 at 9.

For the following reasons, the Court adopts the Report and Recommendation of the Magistrate Judge, REVERSES the Commissioner's decision, and REMANDS the case for further fact-finding, testimony and articulation by the ALJ to determine (1) whether Plaintiff is mentally retarded under the standard set forth in the introductory paragraph of Listing 12.05; and (2) whether Plaintiff has a valid IQ between 60 and 70,

as Listing 12.05 (c) requires.

The Court finds the Magistrate Judge correctly determined the factors surrounding the decision to reverse and remand this matter and relies on the Magistrate Judge's Report and Recommendation as if fully written.

IT IS SO ORDERED.


CHRISTOPHER A. BOYKO
United States District Judge

February 29, 2008

FILED

FEB 29 2008

**CLERK OF COURTS
U.S. DISTRICT COURT, S.D.O.
CLEVELAND**